

**Local 1332, International Longshoremen's Association, AFL-CIO and Trailer Marine Transport Corporation and United Industrial Workers, Service Transportation, Professional and Government of North America, SIUNA-AGLIWD, AFL-CIO**

**Local 1291, International Longshoremen's Association, AFL-CIO and Trailer Marine Transport Corporation and United Industrial Workers, Service Transportation, Professional and Government of North America, SIUNA-AGLIWD, AFL-CIO**

**Local 1242, International Longshoremen's Association, AFL-CIO and Trailer Marine Transport Corporation and United Industrial Workers, Service Transportation, Professional and Government of North America, SIUNA-AGLIWD, AFL-CIO. Cases 4-CD-547, 4-CD-548, and 4-CD-549**

21 February 1984

### DECISION AND ORDER

BY MEMBERS ZIMMERMAN, HUNTER, AND  
DENNIS

Upon charges filed 10 February 1982 by Trailer Marine Transport Corporation, herein called the Employer or TMT, and duly served on Local 1332, International Longshoremen's Association, AFL-CIO; Local 1291, International Longshoremen's Association, AFL-CIO; and Local 1242, International Longshoremen's Association, AFL-CIO, herein called the Respondents, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 4, issued an order consolidating cases and consolidated complaint and notice of hearing on 30 November 1982 against the Respondents, alleging that the Respondents had engaged in and were engaging in unfair labor practices affecting commerce within the meaning of Section 8(b)(4)(i) and (ii)(D) and Section 2(6) and (7) of the National Labor Relations Act. Copies of the charges and consolidated complaint and notice of hearing before an administrative law judge were duly served on the parties to this proceeding.

With respect to the unfair labor practices, the complaint alleges in substance that the Respondents violated the Act by picketing the Employer's Petty's Island, Pennsauken, New Jersey terminal with an object of forcing or requiring the Employer to assign the loading and unloading of trailers on and off oceangoing barges and the maintenance and inspection of said trailers to employees represented by the Respondents rather than to employees represented by United Industrial Workers, Service Transportation, Professional and Government of

North America, SIUNA-AGLIWD, AFL-CIO, herein called SIU. The complaint further alleges that the Respondents have failed and refused to abide by the Board's 29 September 1982 Decision and Determination of Dispute<sup>1</sup> which awarded the disputed work to employees represented by SIU, by failing to comply with the aforesaid decision, and by advising the Regional Director for Region 4 that they will not comply with the aforesaid decision. Subsequently, the Respondents filed their answer to the complaint, admitting in part and denying in part the allegations of the complaint and asserting that all actions by the Respondent were for the sole purpose of preserving and protecting their historic work jurisdiction, that SIU unlawfully coerced the Employer into recognizing SIU as representative of its employees, or, alternatively, that the Employer and SIU entered into an illegal prehire agreement and thereafter hired individuals presented to it by SIU.

On 31 May 1983 counsel for the General Counsel filed directly with the Board motions to transfer and continue the matter before the Board, for summary judgment, and to strike portions of the Respondents' answer. The General Counsel submits, in essence, that the Respondents' answer raises no questions of fact requiring a hearing, that the Respondents admit their failure to comply with the Decision and Determination of Dispute, and that the Respondents are seeking to relitigate issues previously considered in the underlying 10(k) proceeding. The General Counsel further moves the Board to strike the Respondents' answer to the extent that it denies that the Respondents' representatives demanded the work in dispute and the alleged unlawful object of the picketing and asserts that recognition of SIU by the Employer and the agreement between SIU and the Employer are unlawful. On 2 June 1983 the Board issued an order transferring the proceeding to the Board and a Notice To Show Cause why the General Counsel's motion should not be granted. Thereafter, the Respondent filed a response and memorandum in support thereof in which the Respondents reiterated their contentions that the activity complained of was in an effort to preserve work and work opportunities historically held by the Respondents and, thus, was protected activity and that recognition of SIU by the Employer was unlawful.<sup>2</sup> The Respondents

<sup>1</sup> *Longshoremen ILA Local 1332 (Trailer Marine Transport Co.)*, 264 NLRB 319 (1982).

<sup>2</sup> The Respondents also noted that, in related proceedings involving the same facts and parties, they filed two motions to reopen the record seeking, in essence, to submit additional evidence concerning the allegedly unlawful recognition of SIU by the Employer, and that the Board had not ruled on these motions at the time the response and the memorandum

*Continued*

further submit that on 20 April 1983 both parties having agreed to a formal hearing before the AFL-CIO Executive Council, AFL-CIO President Lane Kirkland made a final and binding determination that SIU and its affiliates should disclaim its representational rights at the Employer's Petty's Island terminal. The Respondents contend that this determination raises serious issues of fact and renders the Board's Decision and Determination of Dispute no longer viable; they further argue that for these reasons the General Counsel's Motion for Summary Judgment and motion to strike portions of the Respondents' answer should be denied. Thereafter, the Board granted the Employer leave to file a response to the Respondents' answer and memorandum. In its reply, the Employer contends that the Executive Council's determination dealt only with "representation rights," did not purport to award the work to any group of employees, and therefore was not necessarily inconsistent with the Board's determination. It further argues that the Executive Council's determination has no legal effect on the Board's proceedings as it impinges on the Board's exclusive jurisdiction with respect to representation matters. It thus contends that the Executive Council's decision is irrelevant and that the Motion for Summary Judgment should be granted as Respondents have raised no issue not previously considered.

#### Ruling on Motions to Strike and for Summary Judgment

Review of the record in this proceeding and of the record in the underlying 10(k) proceeding<sup>3</sup> indicates that a hearing was held pursuant to Section 10(k) of the Act at which all parties appeared and were afforded full opportunity to be heard, to cross-examine witnesses, and to adduce evidence bearing on the issues. On 29 September 1982 the Board issued its Decision and Determination of Dispute finding, *inter alia*, the existence of a jurisdictional dispute involving the Respondents and SIU and that there was reasonable cause to believe that Section 8(b)(4)(D) of the Act had been violated. After due consideration of the relevant factors, the Board awarded the disputed work to employees represented by SIU and determined that the Respondents were not entitled by means proscribed by Section 8(b)(4)(D) of the Act to force or require the Employer to assign the disputed work to employees represented by them.

in this case were filed. Subsequently, the Board issued its decision in *Longshoremen ILA Local 1291 (Trailer Marine Transport Corp.)*, 266 NLRB 1204 (1983), in which it denied these motions.

<sup>3</sup> The Board's taking official notice of the record in the 10(k) proceeding and reliance thereon is well-settled. *Electrical Workers IBEW Local 3 (Mansfield Contracting Corp.)*, 206 NLRB 423 (1973).

As noted above, in their answer to the complaint and response to the Notice to Show Cause, the Respondents admit that they have refused and continue to refuse to comply with the Board's Decision and Determination of Dispute but deny that they have engaged in unfair labor practices within the meaning of Section 8(b)(4)(D).<sup>4</sup>

By their denials and assertions, the Respondents seek to place in issue matters which, on review of the record in the 10(k) proceeding, are shown to have been raised and litigated therein. As noted above, Respondents appeared in that proceeding and were provided with a full opportunity to litigate these issues. They offer no evidence herein which was not presented in that proceeding.<sup>5</sup> It is well settled that issues raised and litigated in a 10(k) proceeding may not be relitigated in a subsequent unfair labor practice proceeding, alleging violations of Section 8(b)(4)(D) which are based in part on factual determinations made in the 10(k) proceeding.<sup>6</sup> Accordingly, inasmuch as Respondents are attempting to relitigate issues settled in the underlying 10(k) proceeding, we shall grant the General Counsel's motion to strike portions of the Respondents' answer relating to the above matters.

Further, in the 10(k) proceeding we found reasonable cause to believe that the Respondents had violated Section 8(b)(4)(D) of the Act. The evidence on which the finding is based is, as noted above, neither controverted nor supplemented in this proceeding. Thus, the evidence establishes, and

<sup>4</sup> In their answer, the Respondents deny that their representatives "demanded" that the Employer assign the disputed work to employees represented by them. However, at the 10(k) hearing, ILA representative John Resta admitted telling the Employer's official that the ILA had jurisdiction on the Philadelphia waterfront, that the Employer's operations came under ILA jurisdiction, and that he could not allow the Employer to "take jobs away" from the ILA. Further, the Respondents' answer clearly states that ILA representatives advised TMT that the Respondents' historic work jurisdiction involved loading and unloading of vessels and that, if this type of work were performed at the terminal, the ILA would preserve and protect its work jurisdiction.

<sup>5</sup> With regard to the Respondents' contentions regarding the AFL-CIO Executive Council's determination, we note that the determination did not purport to award the work in dispute to a group of employees but expressly addressed representation rights, a matter within our exclusive jurisdiction. We further note that not all parties herein involved participated in the AFL-CIO Executive Council proceeding and that SIU has not disclaimed the work in dispute. Accordingly, we find that the determination by the AFL-CIO Executive Council has no force and effect on our previous determination in the 10(k) proceeding and is irrelevant to a determination in the instant case.

<sup>6</sup> *Electrical Workers IBEW Locals (Mansfield Contracting Corp.)*, supra; *Bricklayers Union 1 (Shelby Marble & Tile Co.)*, 195 NLRB 123 (1972), *enfd.* 475 F.2d 1316 (D.C. Cir. 1973).

Further, in *ILA Local 1291 (Trailer Marine Transport)*, supra, the Board found that recognition of SIU by TMT was not unlawful. That litigation, at which all parties were given full opportunity to present evidence and litigate the issues, involved the same parties as involved herein and dealt with the same conduct as herein alleged. Accordingly, under the principles of collateral estoppel, our previous findings concerning the parties' conduct are controlling in this proceeding. See *Longshoremen ILA Local 13 (California Cartage Co.)*, 215 NLRB 541 (1974).

we find, that the Respondents have engaged in conduct in violation of Section 8(b)(4)(i) and (ii)(D) of the Act.<sup>7</sup> As there are no issues properly litigable in this proceeding, we grant the General Counsel's Motion for Summary Judgment.

On the basis of the entire record, the Board makes the following

#### FINDINGS OF FACT

##### I. THE BUSINESS OF THE RESPONDENT

The Employer, a Delaware corporation, with its office and principal place of business in Jacksonville, Florida, is engaged in loading and discharging oceangoing barges at various terminals in the United States and foreign countries. During the 12 months preceding issuance of the complaint, a representative period, the Employer, in the course and conduct of its operations, received gross revenues in excess of \$1 million and received in excess of \$50,000 for performing services outside the State of Florida.

We find that the Employer is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the policies of the Act to assert jurisdiction herein.

##### II. THE LABOR ORGANIZATIONS INVOLVED

Local 1332, International Longshoremen's Association, AFL-CIO, Local 1291, International Longshoremen's Association, AFL-CIO; and Local 1242, International Longshoremen's Association, AFL-CIO, and United Industrial Workers, Service Transportation, Professional and Government of North America, SIUNA-AGLIWD, AFL-CIO, are labor organizations within the meaning of Section 2(5) of the Act.

##### III. THE UNFAIR LABOR PRACTICES

###### A. Background and Facts of the Dispute

At all times material hereto the Respondents and SIU have had a jurisdictional dispute concerning work involving the movement of trailers on and off oceangoing barges and the maintenance and inspection of said trailers at the Employer's Petty's Island, Pennsauken, New Jersey terminal. In February 1982, in conversations with officials of the

Employer, individuals identifying themselves as representatives of the International Longshoremen's Association (ILA) claimed the work for the ILA and from 8 February to 22 February 1982 the ILA locals picketed with an object to force or require the Employer to assign the disputed work to employees who are members of or are represented by the Respondents rather than to employees represented by SIU.

###### B. The Determination of the Dispute

On 29 September 1982 the Board issued a Decision and Determination of Dispute (264 NLRB 319) finding that employees represented by SIU are entitled to perform the disputed work and that the Respondents were not entitled by means proscribed by Section 8(b)(4)(D) of the Act to force or require the Employer to assign the disputed work to employees represented by them.

###### C. The Respondent's Refusal to Comply

In addition to their picketing from 8 to 22 February 1982, the Respondents have informed the Regional Director for Region 4 of their intent not to comply with the above-mentioned Decision and Determination of Dispute. The Respondents thereby have not complied with the award and continue to demand the disputed work.

#### CONCLUSIONS OF LAW

1. Trailer Marine Transport Corporation is an employer engaged in commerce within the meaning of Sections 2(6) and (7) and 8(b)(4) of the Act.

2. Local 1332, International Longshoremen's Association, AFL-CIO; Local 1291, International Longshoremen's Association, AFL-CIO; Local 1242, International Longshoremen's Association, AFL-CIO, and United Industrial Workers, Service Transportation, Professional and Government of North America, SIUNA-AGLIWD, AFL-CIO, are labor organizations within the meaning of Section 2(5) of the Act.

3. By inducing or encouraging employees of Trailer Marine Transport Corporation and other persons engaged in commerce or in industries affecting commerce to engage in a strike or a refusal in the course of their employment to use, manufacture, transport, or otherwise handle or work on any goods, articles, materials, or commodities, or to perform services, and by threatening, coercing, and restraining Trailer Marine Transport Corporation and other persons engaged in commerce or in industries affecting commerce, with an object of forcing or requiring Trailer Marine Transport Corporation to assign the disputed work to employees represented by them and by failing and refusing to

<sup>7</sup> In the 10(k) proceeding, the Respondents stipulated to the introduction of certain evidence for the purposes of establishing that reasonable cause existed to believe that Sec. 8(b)(4)(D) had been violated, and they do not now contest the Board's finding that such reasonable cause existed. Accordingly, and in view of the Respondents' admission in their answer that they have refused to comply with the Board's Decision and Determination of Dispute, we find that their conduct was intended to force and require the Employer to assign the disputed work to employees represented by them rather than to employees represented by SIU, respectively, and therefore was for an objective proscribed by Sec. 8(b)(4)(i) and (ii)(D) of the Act.

comply with the Board's Decision and Determination of Dispute, the Respondents have engaged in and are engaging in unfair labor practices within the meaning of Section 8(b)(4)(i) and (ii)(D) of the Act.

4. The aforesaid unfair labor practices are unfair labor practices within the meaning of Section 2(6) and (7) of the Act.

#### REMEDY

Having found that the Respondents have engaged in and are engaging in unfair labor practices within the meaning of Section 8(b)(4)(i) and (ii)(D) of the Act, we shall order it to cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

#### ORDER

The National Labor Relations Board orders that the Respondents, Local 1332, International Longshoremen's Association, AFL-CIO, Local 1291, International Longshoremen's Association, AFL-CIO, and Local 1242, International Longshoremen's Association, AFL-CIO, Philadelphia, Pennsylvania, their officers, agents, and representatives, shall

1. Cease and desist from

(a) Inducing or encouraging individuals employed by Trailer Marine Transport Corporation, or any other person engaged in commerce or an industry affecting commerce, to engage in a strike or refusal in the course of their employment to use, manufacture, transport, or otherwise handle or work on any goods, articles, materials, or commodities, or to perform services.

(b) Threatening, coercing, or restraining Trailer Marine Transport Corporation, or any other person engaged in commerce or in an industry affecting commerce, where in either case, an object thereof is to force or require Trailer Marine Transport Corporation to assign work involving the movement of trailers on and off oceangoing barges and the maintenance and inspection of said trailers at its Petty's Island, Pennsauken, New Jersey terminal to employees who are members of, or represented by, the above-named Locals rather than to employees represented by the United Industrial Workers, Service Transportation, Professional and Government of North America, SIUNA-AGLIWD, AFL-CIO.

(c) Refusing to comply with the Board's Decision and Determination of Dispute as set forth at 264 NLRB 319.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act.

(a) Post at their business offices and meetings halls copies of the attached notice marked "Appendix."<sup>8</sup> Copies of the notice, on forms provided by the Regional Director for Region 4, after being signed by the Respondents' authorized representative, shall be posted by the Respondents immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondents to ensure that the notices are not altered, defaced, or covered by any other material.

(b) Furnish the Regional Director for Region 4 signed copies of such notice for posting by the Employer, if willing, in places where notices to employees are customarily posted.

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps have been taken to comply herewith.

<sup>8</sup> If this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

#### APPENDIX

##### NOTICE TO EMPLOYEES AND MEMBERS POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

WE WILL NOT induce or encourage individuals employed by Trailer Marine Transport Corporation, or any other person engaged in commerce or an industry affecting commerce, to engage in a strike or refusal in the course of their employment to use, manufacture, transport, or otherwise handle or work on any goods, articles, materials, or commodities, or to perform services.

WE WILL NOT threaten, coerce, or restrain Trailer Transport Corporation, or any other person engaged in commerce in an industry affecting commerce, where, in either case, an object thereof is to force or require Trailer Marine Transport Corporation to assign work involving movement of trailers on and off oceangoing barges and the maintenance and inspection of said trailers at its Petty's Island, Pennsauken, New Jersey terminal to employees who are members of or are represented by Local

1332, International Longshoremen's Association, AFL-CIO; Local 1291, International Longshoremen's Association, AFL-CIO; or Local 1242, International Longshoremen's Association, AFL-CIO, rather than to employees who are members of, or are represented by, United Industrial Workers, Service Transportation, Professional and Government of North America, SIUNA-AGLIWD, AFL-CIO.

WE WILL NOT refuse to comply with the Board's Decision and Determination as set forth at 264 NLRB 319 (1982).

LOCAL 1332, INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, AFL-CIO

LOCAL 1291, INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, AFL-CIO

LOCAL 1242, INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, AFL-CIO